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PATENT APPLICATION

ATTORNEY DOCKET NO. 30003000-02U

AF
2624
IFW

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): **WILCOCK et al.**

Confirmation No.: **5849**

Application No.: **09/788,422**

Examiner: **Brian Q. Le**

Filing Date: **21 February 2001**

Group Art Unit: **2624**

AUGMENTATION OF SETS OF IMAGE RECORDINGS

Title:

Mail Stop Appeal Brief-Patents
Commissioner For Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on 5 September 2006.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month
\$120

☐ 2nd Month
\$450

☐ 3rd Month
\$1020

☐ 4th Month
\$1590

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 500. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

☒ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:
Commissioner for Patents, Alexandria, VA 22313-1450
Date of Deposit: 25 October 2006

OR

☐ I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300.

Date of facsimile:

Typed Name: Marilyn Alexander

Signature: Marilyn Alexander

Respectfully submitted,

WILCOCK et al.

By Paul D. Greeley

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Reg No. : 31,019

Date : 25 October 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants: Wilcock et al.
Serial No.: 09/788,422
For: Augmentation of Sets of Image Recordings
Filed: 21 FEB 2001
Examiner: Brian Q. Le
Art Unit: 2624
Confirmation No.: 5849
Customer No.: 27,623 Attorney Docket No.: 30003000-02US

APPEAL BRIEF FILED UNDER 35 U.S.C. §134

Mail Stop Appeal Brief - Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants are filing this Appeal Brief under 35 U.S.C. §134 and in accordance with the provisions of 37 C.F.R. §41.37(a), and believe that the Appeal Brief complies with the requirements set forth in 37 C.F.R. §41.37(c). The claims on appeal are set forth in an Appendix, below.

Appellants mailed a Notice of Appeal on 5 SEP 2006. As such, no petition or fee for an extension of time is required to file this Appeal Brief. However, should the undersigned attorney be mistaken, please consider this to be a petition for any required extension of time, and please then also charge **Deposit Account No. 08-2025** for the required fee. Likewise, the Commissioner is hereby

authorized to charge Deposit Account No. 08-2025 for any required fee not submitted herewith, or submitted incorrectly, so as to maintain the pendency of the above-identified patent application.

(1) Real Party in Interest

The real party in interest is Hewlett-Packard Company.

(2) Related Appeals and Interferences

The undersigned attorney is not aware of any related appeals or interferences.

(3) Status of the Claims

Claims 1 - 11 are pending in this application, and are the subject of this Appeal. Claim 12 is canceled. The claims can be found below in an Appendix.

(4) Status of Amendments

On 3 MAY 2006, the Office mailed a final office action (hereinafter "the Office Action") rejecting claims 1 - 11. No amendments to any of the claims were proposed subsequent to the Office Action.

(5) Summary of Claimed Subject Matter

This Summary makes reference to FIG. 17, which is provided below, at the end of the Summary.

Recording a location independently of taking a photo has relevance to photo creation. For example, the situation may arise that a user would like to take a photograph of a place or item but has run out of film / on-camera storage, or is present at a time when it is not possible to take a photograph (at night, in heavy rain or mist, etc). In such cases, the user can record their location in a photo location

log and subsequently retrieve from the Web (or other photo archive) a photograph similar to that the user wanted to take. (page 18, lines 26 – 31)

FIG. 17 is a diagram showing the recording of the location of desired but not taken photos and the subsequent retrieval of matching images (page 4, lines 11 – 12). In FIG. 17, there is shown a camera 90 provided with location discovery means 29 for location stamping photos. A control means 93 of the camera, when activated by user operation of an input control 28, can be arranged to enable location information 98 to be stored in a memory 94 without the need to actually record image data 95. This permits the camera to log the location of a desired but untaken photo. (page 19, lines 1 – 5)

An album program 50 loads location data from camera 90 (page 19, lines 14 – 16). Thereafter, program 50 executes a process in which a user is given the option of fetching (or initiating an automatic fetch of) photo image data from the Internet to match the location concerned. This process is depicted in FIG. 17 where desired image data is supplied (arrow 172) by a specialised service 174 set up to provide such image data in response to requests (arrow 171). (page 20 , lines 1 – 4)



12/12

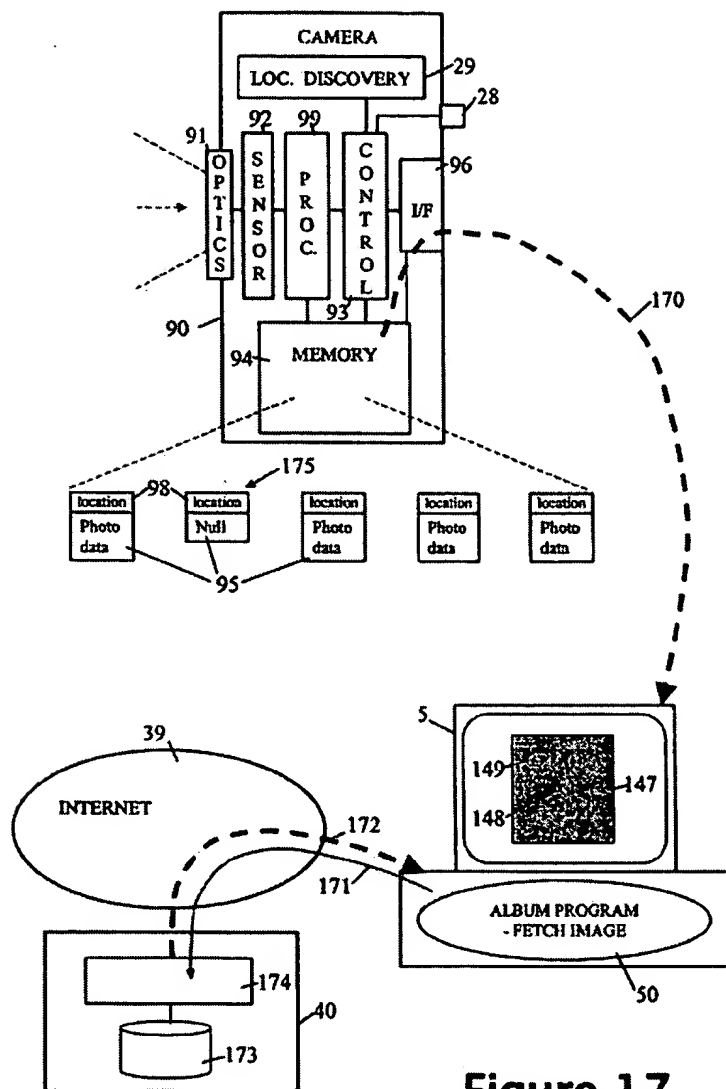


Figure 17

(6) Grounds of Rejection to be Reviewed on Appeal

The issues presented for review are the propriety of the Examiner's final rejection of:

- (a) claims 1 – 5, 7, 8 and 11 under 35 U.S.C. §103(a) as being unpatentable over a combination of U.S. Patent No. 5,606,627 to Kuo (hereinafter "the Kuo patent") and U.S. Patent No. 6,133,945 to Stuetzler (hereinafter "the Stuetzler patent");
- (b) claim 6 under 35 U.S.C. §103(a) as being unpatentable over a combination of the Kuo and Stuetzler patents, and further in view of U.S. Patent No. 5,806,072 to Kuba et al. (hereinafter "the Kuba et al. patent"); and
- (c) claims 9 and 10 under 35 U.S.C. §103(a) as being unpatentable over a combination of the Kuo and Stuetzler patents, and further in view of U.S. Patent No. 6,272,235 to Bacus et al. (hereinafter "the Bacus et al. patent").

(7) Argument

(a) Claims 1 – 5, 7, 8 and 11 stand or fall together.

Argument with respect to the rejection of claims 1 – 5, 7, 8 and 11 under 35 U.S.C. §103(a) as being unpatentable over a combination of the Kuo and Stuetzler patents.

Claim 1 provides for a method that includes, *inter alia*, (a) recording, in association with taking a first image recording with a camera, first data indicative of a geographic location of the camera, (b) recording, in response to an activation of the camera, and separately from taking an image recording using the camera, second data indicative of a geographic location of the camera, and (c) retrieving, from a resource separate from the camera, a second image recording concerning the geographic location indicated by the second data, wherein the second image recording was taken by a device other than the camera. That is, the method involves recording data indicative of a geographic location of a

camera, and retrieving an image recording concerning the geographic location (of the camera) indicated by the data.

The Kuo patent is directed toward a technique for extracting digital elevation data from a pair of stereo images with two corresponding sets of airborne control data associated with each image of the stereo image pair (Abstract). The pair of images includes (a) a left image taken from a first camera station O_L , and space coordinates of the first camera station O_L , and (b) a right image taken from a second camera station O_R , and space coordinates of the second camera station O_R (see FIG. 1B, items 22 and 24; FIG. 2, items O_L and O_R , and col. 7, lines 20 – 48).

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). However, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

The Kuo patent expressly states that images taken from the first camera station O_L are associated with space coordinates of the first camera station O_L , and images taken from the second camera station O_R are associated with space coordinates of the second camera station O_R . The Kuo patent does not describe or suggest retrieving an image from the second camera station O_R concerning the space coordinates of the first camera station O_L . Moreover, retrieving an image from the second camera station O_R concerning the space coordinates of the first camera station O_L , would obviate the use of the space coordinates of the second camera station O_R , thus **changing the principle of operation of the Kuo patent**. As such, the teaching of the Kuo patent is not sufficient to render obvious retrieving, from a resource separate from the camera, a second image recording concerning the geographic location indicated by the second data (which indicates a geographic location of the camera), wherein the second image recording was taken by a device other than the camera, as recited in claim 1.

This deficiency on the part of the Kuo patent, as the Kuo patent relates to claim 1, **cannot be cured by combining the Kuo patent with another reference.** Nevertheless, the Office Action is rejecting claim 1 based on a combination of the Kuo and Steuttler patents.

The Steuttler patent concerns a method and device for displaying images when viewing an object through a video stereomicroscope (col. 1, lines 6 – 9). However, as mentioned above, the Kuo patent is specifically directed toward a processing of airborne data. Appellants respectfully submit that the relative locations of cameras in a stereomicroscope (most likely in very close proximity to one another) are not suggestive of the relative locations of airborne cameras (most likely significantly separated from one another). Accordingly, a modification of the airborne system in the Kuo patent to include cameras as situated in the stereomicroscope of the Steuttler would render the airborne system in the Kuo patent unsuitable for its intended purpose. Thus, **the cited combination of the Kuo and Steuttler patents is not sufficient** to render claim 1 *prima facie* obvious.

Claims 2 – 5, 7 and 8 depend from claim 1. If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Whereas claim 1 is patentable over the cited combination of the Kuo and Steuttler patents, so are claims 2 – 5, 7 and 8.

Claim 11 is an independent claim, and includes recitals similar to those of claim 1, as described above. Therefore, claim 11, for reasoning similar to that provided above in support of claim 1, is also patentable over the cited combination of the Kuo and Steuttler patents.

Appellants respectfully request that the Board of Appeals reverse the final rejection of claims 1 – 5, 7, 8 and 11.

(b) Claim 6 stands alone.

Argument with respect to the rejection of claim 6 under 35 U.S.C. §103(a) as being unpatentable over a combination of the Kuo and Steuttler patents, and further in view of the Kuba et al. patent.

Claim 6 depends from claim 1. As mentioned above, the deficiency on the part of the Kuo patent, as the Kuo patent relates to claim 1, cannot be cured by combining the Kuo patent with another reference. Thus, claim 1, and claim 6 by virtue of its dependence on claim 1, are both patentable over the cited combinations of the Kuo, Stuetzler and Kuba et al. patents. Appellants respectfully request that the Board of Appeals reverse the final rejection of claim 6.

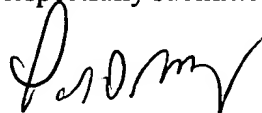
(c) Claims 9 and 10 stand together.

Argument with respect to the rejection of claims 9 and 10 under 35 U.S.C. §103(a) as being unpatentable over a combination of the Kuo and Steuttler patents, and further in view of the Bacus et al. patent.

Claims 9 and 10 depend from claim 1. As mentioned above, the deficiency on the part of the Kuo patent, as the Kuo patent relates to claim 1, cannot be cured by combining the Kuo patent with another reference. Thus, claim 1, and claims 9 and 10 by virtue of their dependence on claim 1, are all patentable over the cited combinations of the Kuo, Stuetzler and Bacus et al. patents. Appellants respectfully request that the Board of Appeals reverse the final rejection of claims 9 and 10.

In view of the foregoing arguments, Appellant respectfully requests that the Board of Appeals reverse the final rejections of the claims, thereby enabling all of the pending claims to be allowed.

Respectfully submitted,



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Date

10/25/06

(8) Claims Appendix

The claims on appeal are set forth below.

1. (previously presented) A method comprising:
recording, in association with taking a first image recording with a camera, first data indicative of
a geographic location of said camera;
recording, in response to an activation of said camera, and separately from taking an image
recording using said camera, second data indicative of a geographic location of said
camera; and
retrieving, from a resource separate from said camera, a second image recording concerning said
geographic location indicated by said second data, wherein said second image recording
was taken by a device other than said camera.
2. (previously presented) A method according to claim 1, wherein both said first data and said
second data are recorded in a recording arrangement that is separate from said camera.
3. (previously presented) A method according to claim 2, wherein said first data and said second
data are recorded in a same sequence of data items.
4. (previously presented) A method according to claim 1, wherein said first data and said second
data are recorded in said camera.
5. (previously presented) A method according to claim 4, wherein said first data and said second
data are recorded in a same sequence of data items.
6. (previously presented) A method according to claim 1, wherein said retrieving comprises
retrieving multiple image recordings, displaying said multiple image recordings, and enabling a user to
choose at least one of said multiple image recordings for retention and association with said first image
recording.

7. (previously presented) A method according to claim 1, wherein said retrieving comprises displaying a map of an area around said geographic location indicated by the second data and obtaining an input detailing a target subject, zone or point, and using said input to facilitate said retrieving.

8. (previously presented) A method according to claim 1,
wherein subsequent to taking said first image recording, a map display shows locations where
said first image recording was taken,
wherein prior to said retrieving, an item is represented on said map display, and
wherein said item corresponds to said geographic location indicated by said second data.

9. (previously presented) A method according to claim 8, wherein when said map display is present, retrieval of an image recording corresponding to said item is initiated by clicking on a displayed graphic element associated with a displayed location corresponding to said item.

10. (previously presented) A method according to claim 1, wherein said retrieving comprises contacting an Internet service system operative to provide image recordings to registered users on the basis of location data supplied in a service request.

11. (previously presented) A method, comprising:
recording a first image using a camera;
recording, in response to an activation of said camera, but separately from taking an image
recording using said camera, data indicative of a geographic location of said camera, said
data being so recorded as to indicate an association with said first image; and
retrieving, based on said data, from a resource other than said camera, a second image concerning
said geographic location, wherein said second image recording was taken by a device other
than said camera.

12. (canceled)

Serial No. 09/788,422
Art Unit 2624

APPEAL BRIEF

(9) Evidence Appendix

None.

(10) Related Proceedings Appendix

None.